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6 UNITED STATES DISTRICT COURT  
7 CENTRAL DISTRICT OF CALIFORNIA  
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10 SAMUEL VERDIN,

11 Plaintiff,

12 v.

13 KATHLEEN ALLISON, *et al.*,

14 Defendants.

Case No. ED CV 22-00597-DMG  
(SSC)

**ORDER ACCEPTING  
FINDINGS, CONCLUSIONS,  
AND RECOMMENDATIONS OF  
UNITED STATES  
MAGISTRATE JUDGE**

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17 Pursuant to 28 U.S.C. § 636, the Court has reviewed all of the  
18 records herein, the Report and Recommendation of United States  
19 Magistrate Judge, and Plaintiff Samuel Verdin's Objections to the  
20 Report and Recommendation. The Court has engaged in a *de novo*  
21 review of those portions of the Report and Recommendation to which  
22 Plaintiff has objected.

23 In this prisoner civil rights action, the Report and  
24 Recommendation ("Report") recommends dismissal of Plaintiff's third  
25 amended complaint with leave to amend only an Eighth Amendment  
26 claim for delayed and/or inadequate medical care. [Doc. # 32.]  
27 Plaintiff's objections to the Report [Doc. # 35] do not warrant a change  
28 to the Magistrate Judge's findings or recommendations.

1 Plaintiff objects that the Magistrate Judge seems “hostile to  
2 Plaintiff’s claims.” *Id.* at 3. To the extent that Plaintiff is alleging  
3 judicial bias, this conclusory objection fails to establish it. *See United*  
4 *States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 566 (9th Cir. 1995)  
5 (“mere conclusory allegations” are “insufficient to support a claim of  
6 bias or prejudice such that recusal is required”) (citing *United States v.*  
7 *Sibla*, 624 F.2d 864, 868 (9th Cir. 1980)); *Yagman v. Republic*  
8 *Insurance*, 987 F.2d 622, 626 (9th Cir. 1993) (mere speculative  
9 assertions of invidious motive are insufficient to show judicial bias).

10 Plaintiff objects that Defendants are not mere prison officials but  
11 instead are peace officers under California law and, therefore, are not  
12 “entitled to the commonly held deferential standards afforded to prison  
13 officials/staff under the Eighth and Fourteenth Amendments.” [Doc. #  
14 35 at 3–5.] This objection does not undermine the Report’s review  
15 under the applicable standards for Plaintiff’s Eighth and Fourteenth  
16 Amendment claims. For his Eighth Amendment claim, Plaintiff was  
17 required to provide allegations that would “objectively show that he was  
18 deprived of something sufficiently serious [and] make a subjective  
19 showing that the deprivation occurred with deliberate indifference to  
20 the inmate’s health or safety.” ([Doc. # 32 at 5 (quoting *Lemire v. Cal.*  
21 *Dep’t of Corr. & Rehab.*, 726 F.3d 1062, 1074 (9th Cir. 2013).) For his  
22 Fourteenth Amendment claim, Plaintiff was required to provide  
23 allegations that would show more than the mere “denial of an inmate’s  
24 grievances.” (*Id.* at 27. Under these applicable standards, Plaintiff’s  
25 allegations were insufficient.

26 Plaintiff objects that his state law claims are not barred in an  
27 action under 42 U.S.C. § 1983. [Doc. # 35 at 5–7.] As the Report found,  
28 however, “violations of state law are not cognizable under § 1983.”

1 [Doc. # 32 at 17 (citing *Barry v. Fowler*, 902 F.2d 770, 772 (9th Cir.  
2 1990).] Although Plaintiff attempts to distinguish *Barry* [Doc. # at 5–6],  
3 the Report’s reliance on it was proper. Under § 1983, “in order to  
4 prevail [Plaintiff] must . . . prove deprivation of a federal constitutional  
5 or federal statutory right.” *Barry*, 902 F.2d at 772. An alleged violation  
6 of state law does not suffice. *See id.* And although Plaintiff makes a  
7 related argument about supplemental jurisdiction of his state tort  
8 claims [Doc. # at 6–7], the Report properly found that “the Court should  
9 not exercise pendent jurisdiction over them in light of the  
10 recommendation that all of Plaintiff’s COVID-19 related Eighth  
11 Amendment claims be dismissed.” [Doc. # at 17 (citing *Gini v. Las*  
12 *Vegas Metro. Police Dep’t*, 40 F.3d 1041, 1046 (9th Cir. 1994).]

13 Plaintiff objects that Defendants’ response to the risks of COVID-  
14 19 was not reasonable. [Doc. # 35 at 7–9.] The objection does not  
15 undermine the Report’s finding that Plaintiff did not plead facts  
16 “showing the unreasonableness of the measures allegedly employed to  
17 attempt to mitigate the effects of a fast-moving and fast-evolving  
18 pandemic in an institutional setting, particularly given the  
19 contemporary uncertainty regarding not only the nature of the virus but  
20 also the efficacy of various containment or mitigation strategies.” [Doc.  
21 # 32 at 10 (citing *Hall v. Allison*, 2022 WL 3013162, at \*11 (C.D. Cal.  
22 July 18, 2022), and similar cases).] And although Plaintiff also objects  
23 that there was supervisory liability [Doc. # 35at 8], he has not alleged  
24 that any supervisors “were personally involved in, or ‘culpable for action  
25 or inaction, in supervision or control of [their] subordinates, acquiesced  
26 in Plaintiff’s alleged constitutional deprivation, or showed a reckless or  
27 callous indifference to Plaintiff’s rights.” [Doc. # 32 at 14 (quoting  
28

1 *McKissick v. Gastelo*, 2021 WL 6617389, at \*6 (C.D. Cal. Aug. 20,  
2 2021).]

3 Plaintiff objects that tort-like acts by government actors, no  
4 matter the source of law, can be remedied under 42 U.S.C. § 1983.  
5 [Doc. # 35 at 9–10.] This objection does not overcome the Report’s  
6 determination that violations of state law are not cognizable and that  
7 the Court should not exercise pendent jurisdiction over Plaintiff’s state  
8 tort claims in light of the dismissal of the COVID-19 related Eighth  
9 Amendment claims. [Doc. # 32 at 17.]

10 Plaintiff objects that his allegations regarding treatment for his  
11 injuries incident to his recreational activities were, contrary to the  
12 Report’s finding, more than threadbare. [Doc. # 35 at 10–11.] This  
13 objection does not overcome the Report’s finding that Plaintiff failed “to  
14 state when, to whom, or by what means such ‘requests’ [for medical  
15 treatment] were made.” [Doc. # 32 at 24.] Nevertheless, Plaintiff will  
16 have an opportunity to raise this claim in a fourth amended complaint  
17 because it is not readily apparent that he cannot allege a constitutional  
18 violation. *Id.* at 26.

19 Plaintiff objects that his due process claim was adequately stated  
20 on pages 11 to 12 of the third amended complaint. [Doc. # 35 at 11.] On  
21 these pages, Plaintiff alleges he filed several grievances regarding  
22 inadequate treatment. [Doc. # 30 at 11–12.] This allegation does not  
23 undermine the Report’s finding that “[a] prison official’s denial of an  
24 inmate’s grievances, without more, cannot serve as a basis for § 1983  
25 liability.” [Doc. # 32 at 27 (citing *Ramirez v. Galaza*, 334 F.3d 850, 860  
26 (9th Cir. 2003) (“inmates lack a separate constitutional entitlement to a  
27 specific grievance procedure”) and similar cases).]

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1 The Court accepts the findings and conclusions of the Magistrate  
2 Judge in the Report and Recommendation.

3 IT IS ORDERED that as to the third amended complaint: (1) all  
4 state law claims are dismissed without leave to amend but without  
5 prejudice; (2) all federal claims except Plaintiff's Eighth Amendment  
6 claim for delayed and/or inadequate medical care are dismissed with  
7 prejudice and without leave to amend; and (3) the Eighth Amendment  
8 claim for delayed and/or inadequate medical care is dismissed with  
9 leave to amend.

10 Within 30 days of this order, Plaintiff may file a fourth amended  
11 complaint containing only an Eighth Amendment claim for delayed  
12 and/or inadequate medical care that remedies the deficiencies outlined  
13 in the Report and Recommendation which has been adopted by this  
14 Court.

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16 DATED: December 30, 2024

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19 DOLLY M. GEE  
20 CHIEF UNITED STATES DISTRICT JUDGE  
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